

SCHEDULE 36

Value for Money Review Process

1. **Scope**

This schedule describes the procedure TfL and the Service Provider will follow in order to review the Service Charges, Services and Standards:

- (A) firstly amongst themselves; and
- (B) (if applicable pursuant to this schedule) using an independent adviser to obtain an objective measurement,

in each case pursuant to this schedule (and each party shall comply with their respective obligations set out in this schedule) for TfL to assess whether this Agreement on its then current terms represents good value for money.

2. **Definitions**

In this schedule the following terms have the following meanings:

“**Benchmarker**” means Compass, Management Consulting, Compass House, 60, Priestley Road, Guildford, Surrey GU2 7YU, United Kingdom, (“**Compass**”) or any other independent benchmarker proposed by TfL and approved by the Service Provider in accordance with paragraph 4.1 to carry out the Benchmarking Exercise;

“**Benchmarking Exercise**” means the objective measurement and comparison of the Service Charges, Services and Standards, including but not limited to processes and technologies used by the Service Provider, by the Benchmarker as specified in paragraph 4 of this schedule;

“**Business Hours**” means the hours of 08.00 to 17.30 on a Working Day;

“**Internal VFM Review**” means the measurement and comparison of the Service Charges, Services and Standards, including but not limited to processes and technologies used by the Service Provider, by the parties as specified in paragraph 3 of this schedule;

“**Review Effective Date**” means the first day of the Extended Term; and

“**Standards**” means the Statement of Requirements and the Service Level Agreement.

3. **Internal Review**

3.1 TfL and the Service Provider agree that TfL may require the Service Provider to undertake an Internal VFM Review in respect of all Services, or one or more Service Elements (a “**Review Request**”) pursuant to clause 3 (Value for Money Review).

3.2 Promptly following the issuing of a Review Request, the Service Provider shall compare the Service Charges, Services and Standards which are the subject of the

Review Request, including but not limited to processes and technologies used by the Service Provider, against the prevailing market for services of a substantially similar nature, quality and coverage as the Services, or part of the Services, the subject of the Review Request and the Service Provider shall use reasonable endeavours to promptly provide to TfL in writing revised Service Charges, Services and Standards in line with the prevailing market.

- 3.3 Each party shall negotiate in good faith to reach agreement on revised Service Charges, Services or Standards based on the written offer from the Service Provider which (if agreed between the parties) will take effect as of the Review Effective Date or such other date as the parties may expressly agree in writing. Any adjustment to the Service Charges shall only result in a decrease in Service Charges, not an increase, and shall take into account: (i) the standard of service required by TfL; (ii) the nature of the Services; and (iii) any specific unusual requirements that TfL has imposed in relation to the provision of the Services.
- 3.4 If the parties have not reached written agreement in relation to the Review Request (and provided that the parties have not reached a written agreement not to revise the Service Charges, Services or Standards the subject of the Review Request), within thirty (30) calendar days of the issuing of the Review Request TfL may request a Benchmarking Exercise in relation to the Review Request.

4. **Benchmarking Exercise**

- 4.1 The parties acknowledge and agree that the appointment of the party identified in paragraph 2 above as Benchmarker (the “**Initial Benchmarker**”) has been approved by TfL and the Service Provider. In relation to the appointment of an independent benchmarker other than the Initial Benchmarker, TfL may propose such Benchmarker and shall notify the Service Provider of such proposal for approval by the Service Provider (such approval not to be unreasonably withheld or delayed).
- 4.2 TfL and the Service Provider agree that, in the circumstances described in paragraph 3.4 of this schedule, TfL may by giving notice to the Service Provider require Benchmarking Exercises for all Services, or one or more Service Elements.
- 4.3 TfL shall give the Service Provider one (1) Month’s prior written notice of its intention to conduct a Benchmarking Exercise, which shall, if necessary, include details of reasonable access requirements to the Service Provider’s premises. The Service Provider shall provide access to those premises to TfL and the Benchmarker at the requested times.
- 4.4 Subject to paragraph 6, the scope of the Benchmarking Exercise shall be as determined jointly and agreed by TfL and the Service Provider prior to the commencement of the Benchmarking Exercise. Any failure to agree the scope of the Benchmarking Exercise shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.5 The Benchmarking Exercise shall be conducted by the Benchmarker during Business Hours. Prior to conducting the Benchmarking Exercise, the Benchmarker must sign an appropriate confidentiality agreement with TfL and the Service Provider in a form mutually agreed to by TfL and the Service Provider (acting reasonably), or where the parties are unable to agree within ten (10) Working Days

of appointment of the Benchmarker, on the Benchmarker's standard terms of confidentiality.

- 4.6 The Service Provider shall co-operate fully with the Benchmarker and shall provide the Benchmarker with all information and assistance it reasonably needs to conduct the Benchmarking Exercise.
- 4.7 TfL shall use reasonable endeavours to ensure that the Service Provider's normal operation is not unduly disrupted during the course of the Benchmarking Exercise.
- 4.8 The Benchmarking Exercise shall be designed to determine the competitiveness of the relevant Service Charges, Services and Standards in terms of their overall value for money and competitiveness for the relevant Services.
- 4.9 The Parties shall be entitled to make written submissions to the Benchmarker in such format and containing such information as the Benchmarker may deem fit and/or request.
- 4.10 For the purposes of the Benchmarking Exercise, Service Charges shall be deemed to be less competitive than those available in the market place, if they differ by more than 5% (five per cent) from the median charges payable to similar suppliers in aggregate for similar services on similar terms and conditions having regard to all relevant factors, including but not limited to the size, complexity and term of such services. For the purposes of such exercise, the similar services need not be provided by all similar suppliers.
- 4.11 The Benchmarker will be instructed to consider any impact on the Services or the competitiveness of the Service Charges of services performed by, and dependencies on, TfL and Third Parties.
- 4.12 For the purposes of this schedule, a "similar supplier" will be a competitor (or group of competitors) of the Service Provider and/or a provider of information technology, asset and facilities management, enforcement, call centre and/or customer service services with a substantially similar range of services, size, international presence and market position, or which provide one or more similar services to those Services being benchmarked, in each case as identified by the Benchmarker.
- 4.13 The parties acknowledge and agree that confidential information of similar suppliers shall be kept confidential by the Benchmarker.

5. **Costs of Benchmarking Exercise**

- 5.1 The fees and expenses incurred by the Benchmarker in relation to the Benchmarking Exercise will be borne by TfL and the Service Provider equally, on the basis of a fifty-fifty division of such costs.
- 5.2 Each party shall bear its own internal costs related to the Benchmarking Exercise.

6. **Benchmarking Methodology**

- 6.1 TfL and the Service Provider agree that the benchmarking methodology will be based on the customer peer group approach whereby a comparison is made with clients of comparable size, services, scope and any other criteria determined by the

Benchmarker following such consultation with TfL and the Service Provider as the Benchmarker deems appropriate.

- 6.2 A like-for-like comparison will be made, based on current and in-depth information which has been captured by the Benchmarker for similar suppliers and populated in its database.
- 6.3 The parties will use all reasonable endeavours to ensure that the complete cycle from start to finish for each Benchmarking Exercise will take approximately nine (9) weeks from the date that TfL confirms in writing that a Benchmarking Exercise is required.
- 6.4 The Benchmarker will adopt the following approach in carrying out a Benchmarking Exercise:
- (A) design – one-off event:
- (1) understand and agree detailed configuration and pricing as it is set out in the Service Provider proposal;
 - (2) analyse and understand the Services provided by the Service Provider;
 - (3) agree on mapping to the Benchmarker data base;
 - (4) identify any value added services being offered (if any); and
 - (5) set-up TfL configuration model.
- (B) Benchmarking Exercise:
- (1) review and modify the TfL configuration model in the Benchmarking Exercise;
 - (2) select suitable reference group from the Benchmarker database as set out in the scope agreed or determined in accordance with paragraph 4.4 to be based upon those similar suppliers operating in similar geographical regions to those from which the Services are provided at the time of the Benchmarking Exercise;
 - (3) if different to that group referred to under paragraph 6.4(B)(2) above, for information and comparison purposes only, identify a suitable reference group from the Benchmarker worldwide database;
 - (4) compare the current Agreement and related Services, Service Charges and terms and conditions with comparable deals in the relevant market place;
 - (5) prepare draft findings and present to TfL and the Service Provider;
 - (6) make any changes and adjustments as agreed by the Benchmarker;
 - (7) prepare final comparison and present findings; and
 - (8) create a savings model.

7. **Results of Benchmarking Exercise**

- 7.1 Each party agrees that the Benchmarker will be required to provide the data, analysis and findings, including any supporting documentation, to TfL and the Service Provider, as appropriate, throughout the Benchmarking Exercise.
- 7.2 Each party agrees that the Benchmarker will be required to provide the results of the Benchmarking Exercise in writing to TfL and the Service Provider as soon as possible, but no later than thirty (30) days from the conclusion of the Benchmarking Exercise.
- 7.3 Following completion of the Benchmarking Exercise, TfL and the Service Provider shall promptly and jointly review the results of the Benchmarking Exercise.
- 7.4 If the results of the Benchmarking Exercise show that Service Charges, Services or Standards are less competitive (as defined in paragraph 4.10) than those available in the relevant market place, TfL and the Service Provider shall negotiate in good faith to agree upon an appropriate adjustment of those Service Charges, Services or Standards (including, where required by TfL, a re-baselining of the underlying rates and charges) that will match with or will be more competitive than said charges, services or standards available in the relevant market place. Any adjustment to the Service Charges shall only result in a decrease in Service Charges, not an increase.
- 7.5 TfL and the Service Provider will resolve any dispute related to the performance of the Benchmarking Exercise in accordance with the Dispute Resolution Procedure.
- 7.6 If TfL and the Service Provider fail to agree upon an adjustment of the Service Charges, Services or Standards within six (6) Months of delivery of the results of the Benchmarking Exercise (such period being the “**Negotiation Period**”) by the Benchmarker then:
- (A) the Service Charges, Services and Standards shall automatically be brought into line with the findings of the Benchmarking Exercise, provided that the maximum reduction in the Service Charges shall be five percent (5%);
 - (B) The maximum term of extension permitted under clause 2.2 shall be two (2) years, rather than five (5) years from the expiry of the Initial Term;
 - (C) TfL shall be entitled at any time up to the date ten (10) Working Days after the expiry of the Negotiation Period to extend the term of this Agreement in accordance with clause 2.2 and subject to paragraph 7.6(B) notwithstanding that the date for service of notice under clause 2.2 may have passed; and
 - (D) during any such extension the parties shall negotiate in good faith in an effort to agree an appropriate basis upon which TfL shall be entitled to extend the term of this agreement for longer. Such discussions shall be without prejudice to TfL’s rights to seek offers from New Service Providers (whether through a competitive process or otherwise).

8. **Effect of Revisions**

If the Service Charges, the Services or the Standards, are revised pursuant to paragraphs 3.3, 7.4, 7.5 or 7.6 of this schedule, then schedules 2 (Statement of Requirements), 5 (Service Level Agreement), 7 (Charging) and 8 (Operational Pricing) shall be amended in writing to reflect such adjusted Service Charges, Services or Standards, and such adjustment shall apply with effect from the Review Effective Date. Such adjustment shall be prospective only, and not retrospective.